

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

LOS ANGELES UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2010050500

ORDER DENYING REQUEST FOR
RECONSIDERATION

On May 13, 2010, Student filed a Due Process Hearing Request¹ (complaint). At the September 30, 2010 prehearing conference (PHC), the undersigned administrative law judge (ALJ) issued an order partially granting the District's motion to strike an issue for hearing, listed as Issue 4(b) in the Student's Supplemental Prehearing Conference Statement. On October 6, 2010, Student filed a motion for reconsideration of the ALJ's order, partially granting the motion to strike. On October 11, 2010, District filed an opposition to the motion.

APPLICABLE LAW

The Office of Administrative Hearings will generally reconsider a ruling upon a showing of new or different facts, circumstances, or law justifying reconsideration, when the party seeks reconsideration within a reasonable period of time. (See, e.g., Gov. Code, § 11521; Code Civ. Proc., § 1008.) The party seeking reconsideration may also be required to provide an explanation for its failure to previously provide the different facts, circumstances or law. (See *Baldwin v. Home Savings of America* (1997) 59 Cal.App.4th 1192, 1199-1200.)

The complaint must contain a description of the nature of the problems, including facts relating to such problems. The complaint should also contain proposed resolutions to the problems. (20 U.S.C. §§ 1415(b)(7)(a)(III) and (IV).)² The purpose of these requirements is to promote fairness by providing respondents with a specific understanding of the allegations against them, to prevent respondents from having to prepare for any and every issue that could possibly be raised, to provide respondents with sufficient information

¹ A request for a due process hearing under Education Code section 56502 is the due process complaint notice required under Title 20 United States Code section 1415(b)(7)(A).

² All further statutory references are to Title 20 United States Code, unless otherwise noted.

to respond to the complaint as required by section 1415(c)(2)(B) and to enable the parties to meaningfully participate in a resolution session and mediation under section 1415, subsections (e) and (f). In addition, fundamental principles of due process apply to administrative proceedings in special education matters. A party against whom a complaint has been filed is entitled to know the nature of the specific allegations being made against it, such that the party may be able to prepare a defense. (*Tadano v. Manney* (9th Cir. 1947) 160 F.2d 665, 667; *Hornsby v. Allen* (5th Cir. 1964) 326 F.2d 605, 608.)

DISCUSSION AND ORDER

At the PHC, District moved to strike the following issue, as listed in the Student's supplemental PHC statement:

"4. Whether the District denied Student a FAPE during the 2008-2009 and 2009-2010 school years when it significantly impeded Parents' ability to meaningfully participate in the decision-making process by . . . (b) Misrepresenting his progress in the general curriculum and toward IEP goals."

District contended that this issue was not among the complaint's listed problems and related facts. Upon review of the complaint, Student's counsel referred to the complaint's Problem Number Two, at page 23, lines 7 through 9, which reads:

"The District has violated its duty to remediate [Student's] reading problems through appropriate assessment, goals and services and has misrepresented that [Student] has made meaningful 'progress' in reading."

The ALJ gave Student's counsel time to search the complaint (41 pages) for any additional language in the complaint's described problems which could be used in response to District's motion. Student's attorney could find none. Indicating that enough time had already been invested in searching the complaint, the ALJ ruled on the District's motion, granting the motion to strike in part. The issue was amended to be limited to reading, only. The ALJ stated that the Student could make a motion for reconsideration should counsel later find language that District misrepresented that Student made meaningful progress in areas other than reading.

In support of the motion for reconsideration, Student refers to the complaint's section V, PROPOSED RESOLUTION, paragraph 83, subpart A (9), at page 37, which reads in relevant part:

"83 In order to resolve the above-stated problems and provide [Student] with an appropriate education for the 2009-10 school year, [Student] and his parents are entitled to the following *findings* [italics in complaint]: . . .

"A. The District denied [Student] an appropriate education from kindergarten to the present when it: . . . (9) Repeatedly and continually

misrepresented that [Student] was making progress, and did not need additional services; . . .”

Student contends that this statement puts District on notice that it repeatedly and continually misrepresented Student’s progress. It does not.

Student refers to a section which catalogues the requested findings to resolve “the above-stated problems.” The only above-stated problem, with the requisite related facts, is the assertion that District misrepresented Student’s progress as to his reading. (Problem Number Two, page 23, lines 7 through 9.) The described problems and related facts do not otherwise refer to the District’s misrepresentation of Student’s progress. Student’s requested resolution is for a general finding that exceeds or expands the complaint’s description of the subject problem. Such a finding would be inappropriate and certainly is insufficient to put the District on notice, as contemplated by statute, elevating the requested finding to a described problem with related facts. This is not language which supports reconsideration of the order on District’s motion to strike.

ORDER

Student’s motion for reconsideration is denied.

Dated: October 21, 2010

/s/

CLIFFORD H WOOSLEY
Administrative Law Judge
Office of Administrative Hearings